

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-124
Hawaii Administrative Rules

October 31, 2002

SUMMARY

1. §3-124-1 is amended.
2. §§3-124-2 to 3-124-5 are amended.
3. §§3-124-10 to 3-124-12 are amended.
4. §3-124-15 is amended.
5. §§3-124-17 and 3-124-18 are amended.
6. §§3-124-20 to 3-124-26 are amended.
7. §§3-124-30 to 3-124-33 are amended.
8. §3-124-35 is amended.
9. §§3-124-40 to 3-124-45 are amended.
10. §3-124-50 to 3-124-52 are amended.
11. §§3-124-54 and 3-124-55 are amended.
12. §§3-124-60 to 3-124-66 are amended.
13. The Exhibit is repealed.
14. Chapter 124 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 124

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SUBCHAPTER 1

HAWAII PRODUCTS

Historical Note: Subchapter 1, Chapter 124, Subtitle 11 of Title 3, Hawaii Administrative Rules, is based upon Chapter 60 of Title 3, HAR, Rules Governing Preference for Hawaii Products of the department of accounting and general services. [Eff. 3/20/81; R 12/15/95]

§3-124-1 Purpose. (a) The purpose of these rules is to provide procedures for qualifying and registering products on the Hawaii products list and for the application of preferences thereof. The objective is to promote the use of Hawaii products, as defined below, by state purchasing agencies.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02]
(Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-1.01 Applicability. (a) These rules shall apply to all solicitations made pursuant to sections 103D-302 and 103D-303 issued by a purchasing agency when a registered Hawaii product is available where the product is required.

(b) These rules shall not apply whenever the application will disqualify any government agency from receiving federal funds or aid. [Eff and comp 11/17/97; comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-2 Definitions. Definitions are in section 103D-1001, HRS. The following definitions are also applicable to terms used in this chapter:

"Hawaii input" means that part of the cost of a product attributable to production, manufacturing, or other expenses arising within the State. "Hawaii input" includes but is not limited to:

- (1) The cost to mine, excavate, produce, manufacture, raise, or grow the materials in Hawaii;
- (2) The added value of that portion of the cost of imported materials that is incurred after landing in Hawaii;
- (3) The cost of labor, variable overhead, utilities, and services incurred in the production and manufacturing of materials or products in the State;
- (4) Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools and equipment situated and located in the State and utilized in the production or manufacturing of a product.

"Hawaii products list" means the list published by the administrator itemizing those products that have been found qualified as Hawaii products, the names and addresses of the manufacturers, the classes and preference percentages that the products will be allocated if they meet the requirements for which offers are solicited.

"Non-Hawaii product" means a product that is not registered on the Hawaii products list.

"Registered Hawaii product" means a Hawaii product that is registered on the Hawaii products list. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-3 Qualification procedure. (a) Any person desiring a preference pursuant to this subchapter, must have the product(s) qualified and registered on the Hawaii products list. The responsibility for qualification shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted. Persons desiring to qualify their product(s) shall complete an application according to instructions and file with the

administrator. Financial information submitted to the administrator pursuant to these rules for the purpose of determining classification of a product shall be treated as confidential when a person has made a written request for confidentiality. In accordance with chapter 92F, HRS, the administrator shall properly safeguard such information and shall not make it available to the public.

(b) A single application may be submitted for more than one product; however, separate data sheets shall be submitted for each product for which registration is requested. Further, it is necessary that each product be specified clearly and not by broad category of product.

(c) Cost data for each product shall reflect the product's actual total production cost for the most recent full accounting period. If a product has not been in production during the full accounting period, approval may be granted based on cost data representing that shorter period.

(d) If upon completion of the review, the administrator finds that a product has qualified as a Hawaii product, the administrator shall so notify the applicant in writing, list the product on the Hawaii products list as a registered Hawaii product, and notify the chief procurement officers and heads of purchasing agencies or designees of the decision. Applicants whose products do not qualify for the Hawaii products list shall be notified in writing of the decision and the reasons therefor. Any applicant whose product was determined not to qualify for registration on the Hawaii products list or who contests the classification may resubmit their application within thirty days addressing the reasons therefore. The administrator shall respond to the applicant within thirty days.

(e) Should the administrator receive a protest challenging the validity of the classification of a Hawaii product, the administrator may request an audit of the information provided should the need arise to determine if the proper classification of the product is as defined under Hawaii product in section 103D-1002, HRS. A request for audit shall be sent to the person having requested registration of the product on the Hawaii products list, and the person shall bear the cost of the audit. The administrator may also request any additional information determined necessary in order to determine proper classification. The administrator shall approve or reject the

classification for each Hawaii product and advise the applicant or contractor within thirty days after receipt of information.

(f) Application, renewal, and other forms required shall be provided by the administrator. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §§92F-14, 103D-1002)

§3-124-4 Solicitation procedure. (a) Solicitations to which this preference is applicable shall refer to this subchapter and shall also contain a notice referring to the place where the Hawaii products list may be examined.

(b) To be eligible for preference, a product shall be qualified and registered on the Hawaii products list. The effective date of when a product is determined to be qualified and registered on the Hawaii products list is one month after the product has been approved by the state procurement office.

(c) To be listed in a solicitation, the effective date when a product was qualified and registered on the Hawaii products list shall be no later than the date a solicitation is first publicly advertised.

(d) The classification of a registered Hawaii product on the date a solicitation is first publicly advertised shall determine the preference allowed the product.

(e) Prospective offerors shall be informed of the registered Hawaii product and its established class that meets the requirements for which offers are being solicited.

- (1) When more than one registered Hawaii product meeting minimum requirements is available, a schedule describing all registered Hawaii products and their established classes shall be included in the solicitation.
- (2) Purchasing agencies shall provide in the solicitation appropriate space(s) for offerors to indicate selection of the Hawaii products preference and to list the Hawaii product and its price f.o.b. jobsite, unloaded, including applicable general excise tax and use tax. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-5 Evaluation procedure and contract award.

(a) In any expenditure of public funds resulting from a contract award, a purchasing agency shall purchase any required product from the Hawaii products list where the registered Hawaii product is available, provided the product meets the specifications and the selling price f.o.b. jobsite, unloaded, including applicable general excise tax and use tax and does not exceed the lowest delivered price in Hawaii f.o.b. jobsite, unloaded, including applicable general excise tax and use tax, of a similar non-Hawaii product by more than three per cent, where class I registered Hawaii products are involved, or five per cent where class II registered Hawaii products are involved, or ten per cent where class III registered Hawaii products are involved.

(b) For evaluation purposes, no preference shall be considered when only registered Hawaii products are offered.

(c) Where offers include both registered Hawaii products and non-Hawaii products, for the purpose of determining the lowest evaluated offer, the offer for the Hawaii product shall be decreased by its applicable three per cent, five per cent, or ten per cent classification preference

(d) The contract amount shall be the amount of the price offered, exclusive of any preference.

(e) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except preference (1) shall be subtracted from the Hawaii products price.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003,

HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(f) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made to the offeror offering a registered Hawaii product in preference to a non-Hawaii product.

(g) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-6 Change in class status. (a) A person whose product is on the Hawaii products list shall be responsible for informing the administrator of any change affecting the classification of the product within sixty days of the change.

(b) If, since the original application, there has been a change in either the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost of the product(s), which could affect the product(s) classification, a new application must be submitted within sixty days of the change. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-7 Biennial renewal. (a) All persons whose product(s) is registered on the Hawaii products list will be notified by the State thirty days prior to the date for biennial renewal or if a new application is required. A sixty day grace period is allowed for both the renewal and the new application after the preference expiration date which normally will be the end of an accounting period.

(b) An affidavit for renewal shall be submitted if, since the filing of the original application, there has been no change in either the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost affecting the product classification. Provided the administrator is satisfied that the classification of a registered

Hawaii product is not changed, the administrator shall renew the registration and classification of the product.

(c) Failure to complete the biennial renewal or to provide any further information requested by the administrator shall be grounds for rejecting an application or for disqualification of the product.

(d) Any person receiving a notice for renewal for Hawaii products list qualification shall advise the administrator immediately if there is any reason why the person cannot comply within the sixty day grace period. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-8 Termination. If change of status is not reported as required in section 3-124-6, or if the biennial renewal is not provided as required by section 3-124-7, the administrator shall terminate the registration of the product effective at the end of the sixty day grace period allowed. Any person terminated that desires to be reinstated on the Hawaii products list shall submit a new application. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-9 (Reserved).

SUBCHAPTER 2

PRINTING, BINDING, AND STATIONERY WORK

§3-124-10 Purpose. (a) The purpose of these rules is to provide procedures for the application of the preference for printing, binding, and stationery work, including all preparatory work, presswork, bindery work, and any other production-related work, performed within the State. The objective is to promote the use of businesses performing the work in Hawaii by state purchasing agencies.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02]

(Auth: HRS §103D-202) (Imp: HRS §103D-1003)

§3-124-11 Applicability. (a) All bids submitted pursuant to section 103D-302, HRS, for a printing, binding, or stationery contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, to include storage and shipping costs, shall receive a fifteen per cent preference for the purposes of bid evaluation.

(b) These rules shall not apply whenever the application will disqualify any government agency from receiving federal funds or aid. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1003)

§3-124-12 Evaluation procedure and contract award. (a) If the in-state price is low, award shall be made to the bidder offering to perform the work in Hawaii.

(b) If an out-of-state price is low, the following applies in determining the lowest evaluated price:

- (1) The amount bid for work performed out-of-state shall be increased by fifteen per cent.
- (2) The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria.

(c) The contract amount shall be the price offered, exclusive of any preferences.

(d) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preference (1) shall be subtracted from the Hawaii products price.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006,

- HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
 - (5) Reciprocal preference, pursuant to section 103D-1004, HRS;
 - (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;
 - (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.
- (e) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made pursuant to section 3-122-34. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) Imp: HRS §103D-1003)

§3-124-13 REPEALED. [R 11/17/97]

§3-124-14 (Reserved).

SUBCHAPTER 3

RECIPROCAL

§3-124-15 Purpose. (a) The purpose of these rules is to provide procedures for the application of the reciprocal preference. The objective is to ensure fair and open competition for Hawaii businesses engaged in contracting with the State.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-16 Definitions. As used in these rules: "Out-of-state bidder" means any person, agency, corporation, or other business entity whose principal place of business or ancillary headquarters is not

located in the State or is not registered with the state department of commerce and consumer affairs to do business in the State. [Eff 12/15/95; am and comp 11/17/97; comp 11/15/01; comp 11/25/02] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-17 Applicability. (a) The chief procurement officer may impose a reciprocal preference against bidders from states which apply preferences.

(b) When applied to solicitations made pursuant to section 103D-302, HRS, a resident bidder of the State of Hawaii may be given a reciprocal preference equal to the preference the out-of-state bidder would be given in their own state. If the out-of-state bidder's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference.

(c) At least annually, the administrator of the state procurement office shall make available a list of preference laws of all states to the chief procurement officers.

(d) These rules shall not apply to any transaction if the provisions of these rules conflict with any federal laws. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-18 Evaluation procedure and contract award. (a) When applied, the amount of the reciprocal preference as specified in section 3-124-17 shall be added for evaluation purposes to the out-of-state bidder's price.

(b) Pursuant to section 103D-302, HRS, the responsible and responsive bidder submitting the lowest evaluated bid, taking into consideration all applicable preferences, shall be awarded the contract.

(c) The contract amount shall be the price bid, exclusive of preference.

(d) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that

preference (1) shall be subtracted from the Hawaii products price.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;
- (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(e) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made pursuant to section 3-122-34. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-19 (Reserved).

SUBCHAPTER 4

RECYCLED PRODUCTS

Historical Note: Subchapter 4, Chapter 124, Subtitle 11 of Title 3, Hawaii Administrative Rules, is based upon Chapter 62 of Title 3, HAR, Procurement of Recycled Products of the department of accounting and general services. [Eff. 11/4/93; R 12/15/95]

§3-124-20 Purpose. (a) The purpose of these rules is to establish percentages of preference, the method of determining the recycled content to qualify various products for preference, and the application of the preference. The objective is to promote the use of recycled products by state and county public purchasing

agencies.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-21 Definitions. Definitions are in section 103D-1001, HRS. The following definitions are also applicable to terms used in this chapter:

"End use" means the purpose for which an item has been manufactured.

"Post-consumer recovered material" means any product used by a consumer, including a business that purchases the material, that has served its intended end use, and that has been separated or diverted from the solid waste stream for the purpose of use, reuse, or recycling.

"Recovered material" means material that has been separated, diverted, or removed from the solid waste stream after a manufacturing process for the purpose of use, reuse, or recycling. This term does not include those materials that are generated and normally reused on-site for manufacturing processes (such as mill broke, in the case of paper products).

"Recycled content" means the percentage of a product composed of recovered material, or post-consumer recovered material, or both.

"Recycled product" means a product containing recovered material, or post-consumer recovered material, or both.

"Solid waste stream" means discarded material moving from the point of discard to ultimate disposition. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 206M-31)

§3-124-22 Applicability. (a) These rules shall apply to all solicitations issued pursuant to section 103D-302, HRS, by a purchasing agency when it is required or so stated in the solicitation.

(b) These rules shall not apply whenever the application will disqualify any government agency from receiving federal funds or aid. [Eff 12/15/95; am and

comp 11/17/97; am and comp 11/15/01; am and
comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005)
(Imp: HRS §§103D-1005, 342G-42)

§3-124-23 Qualification procedure. (a) The solicitation shall contain the per cent of recycled content required to qualify various products for a preference. Any person desiring a preference pursuant to section 103D-1005, HRS, shall certify the recycled content of the product when submitting a bid. The Certification of Recycled Content form issued by the administrator shall be completed and submitted as part of the bid.

(b) Bidders shall indicate on the certification form, included as part of the solicitation, the recycled content of the products offered. Recycled content shall be expressed as a percentage of total product weight.

(c) Bidders shall submit with the certification form sufficient information to support the stated recycled content of the products offered. For purposes of this section, sufficient information shall include, but not be limited to, manufacturer's specifications, or manufacturer's certification. The procurement officer calling for bids may request additional information deemed necessary in order to qualify a product. The procurement officer calling for bids shall have sole discretion in determining acceptance of a product.

(d) Any bidder whose product is not accepted for application of preference may appeal by filing a written request for re-examination of facts to the procurement officer calling for bids. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-24 Bidding procedure. (a) Solicitations issued by a purchasing agency pursuant to section 103D-302, HRS, and consistent with section 3-122-21, shall contain a notice stating that a price preference will be given to recycled products. The solicitation shall contain the percent of recycled content required to qualify various products for a price preference. The price preference will be at least five per cent of the price of the item, and will be used for price evaluation.

(b) All purchasing agencies issuing bids shall provide an appropriate space for bidders to indicate use of a recycled or a non-recycled product and to list the prices of the recycled or non-recycled products.

(c) When a purchase specifies only recycled products or when only recycled products are bid, the price preference shall not apply.

(d) Bidders requesting a preference shall submit a completed certification form, as required by section 3-124-23, with each bid. Previous certifications shall not apply unless allowed by the bid. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-25 Evaluation procedure and contract award. (a) When bids received contain both recycled products and non-recycled products, for the purpose of determining the lowest evaluated bid, the original price for the non-recycled product item shall be increased by the percentage specified in the solicitation.

(b) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preference (1) shall be subtracted from the Hawaii products price.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
 - (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
 - (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
 - (4) Recycled products, pursuant to section 103D-1005, HRS;
 - (5) Reciprocal preference, pursuant to section 103D-1004, HRS;
 - (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;
 - (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.
- (c) The responsible and responsive bidder

submitting the lowest evaluated bid, taking into consideration all applicable preferences shall be awarded the contract.

(d) The contract amount shall be the original price bid, exclusive of any preference.

(e) Should the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices, award shall be made to the responsible and responsive bidder as follows:

- (1) To the bidder bidding the product with the higher post-consumer recovered material content; or
- (2) To the bidder bidding the product with the higher recovered material content if the products have identical post-consumer recovered material content.

(f) If the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices for products with identical recycled content, the procurement officer shall follow the requirements of section 3-122-34 for low tie bids. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-26 Mandatory purchase of office paper and printed material with recycled content. (a) State purchasing agencies shall and county purchasing agencies are urged to purchase only office paper and printed material with recycled content.

(b) Exceptions to this section require the written approval of the chief procurement officer and are permitted when statutory, regulatory, contractual, or agency requirements preclude the use or purchase of paper with recycled contents of the same type and quantity as virgin paper.

(c) When a solicitation calls for recycled products only, the preference stated in this subchapter shall not apply. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §103D-1005)

§§3-124-27 to 3-124-29 (Reserved).

SUBCHAPTER 5

SOFTWARE DEVELOPMENT BUSINESSES

§3-124-30 Purpose. (a) The purpose of these rules is to establish a percentage of preference, the method to qualify various software development businesses for the preference, and application of the preference. The objective is to promote the use of Hawaii software development business by state purchasing agencies.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§3-124-31 Definitions. Definitions are in section 103D-1001, HRS. The following definitions are also applicable to terms used in this chapter:

"Hawaii software development business" means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State of Hawaii that proposes to obtain eighty per cent of the labor for software development from persons domiciled in Hawaii.

"Hawaii software service center" means the high technology development corporation that shall be responsible for maintaining the listings of all state software development projects. Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §§103D-1006, 206M-31)

§3-124-32 Applicability. (a) These rules shall apply to all solicitations made pursuant to sections 103D-302 and 103D-303, HRS, issued by a purchasing agency when so stated in the solicitation.

(b) These rules shall not apply whenever the application will disqualify any government agency from receiving federal funds or aid.

(c) The Hawaii software service center shall develop and make public a list of governmental agencies requesting software services including a description of the software services required and a timetable for

development.

(d) The information provided on the list shall not be binding and may be changed at the discretion of state agencies, provided that any changes shall be promptly communicated to the Hawaii software service center. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §§103D-1006, 206M-33)

§3-124-33 Qualification procedure. (a) A business desiring a preference pursuant to section 103D-1006, HRS, shall certify that they are a Hawaii software development business when submitting an offer. A Certificate of Eligibility form issued by the administrator shall be used to certify the business and be included as part of the offer.

(b) Offerors shall indicate on the certification form, included as part of the offer, sufficient information to substantiate that eighty per cent of the employees who will be working on the proposed software development project are domiciled in Hawaii.

(c) Offerors shall submit with the certification form sufficient information to support the Hawaii software development business preference. Sufficient information shall include, but not be limited to, the authorized officer's name, office or position held, name of offeror and its local address, date that the office was opened, name and local addresses of offeror's employees who will provide the labor for the required services. The procurement officer calling for offers may request additional information deemed necessary in order to qualify the offeror, and shall have sole discretion in determining acceptance of the offeror as a Hawaii software development business.

(d) Any offeror who is not accepted for the Hawaii software development business preference may appeal by filing a written request for re-examination of facts to the procurement officer who issued the solicitation. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§3-124-34 Solicitation procedure. (a) Solicitations issued by a state purchasing agency shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the

price, and will be used for evaluation.

(b) All state purchasing agencies shall provide an appropriate space for offerors to indicate whether the bidder is requesting the Hawaii software development business preference.

(c) When a solicitation specifies that because of federal requirements, the Hawaii software development business preference will not be considered, the price preference shall not apply.

(d) Offerors requesting a preference shall submit a completed certification form, as required by section 3-124-33, with each offer. Previous certifications shall not apply unless allowed by the solicitation.

(e) Any offeror who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the offeror's offer will be increased by ten per cent for purposes of evaluation. [Eff 12/15/95; am and comp 11/17/97; comp 11/15/01; comp 11/25/02] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§3-124-35 Evaluation procedure and contract award. (a) In any expenditure of public funds for software development where offers received contain both Hawaii and non-Hawaii software development businesses, for the purpose of selecting the lowest offer only, the offer by a non-Hawaii software development business shall be increased by ten per cent.

(b) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified herein. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preference (1) shall be subtracted from the Hawaii products price.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to section 103D-1004, HRS; and

- (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;
- (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.
- (c) The responsible and responsive offeror submitting the lowest evaluated offer(s) pursuant to section 103D-302, HRS, taking into consideration all applicable preferences shall be awarded the contract.
- (d) The contract amount shall be the original price offered, exclusive of any preference.
- (e) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical evaluated prices for Hawaii software development projects, the procurement officer shall award the contract resulting from an invitation for bids pursuant to section 3-122-34.
- (f) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§§3-124-36 to 3-124-39 (Reserved).

SUBCHAPTER 6

PREFERENCE TO IN-STATE CONTRACTORS BIDDING ON STATE AGENCY CONTRACTS FOR PUBLIC WORKS PROJECTS

§3-124-40 Purpose. (a) The purpose of these rules is to establish the method of determining preference to in-state contractors when awarding a contract for a public works project. The objective is to promote the use of in-state contractors.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

§3-124-41 Definitions. The following definitions are also applicable to terms used in this chapter:

"State agency" means any board, commission, department, bureau, division, agency, or political subdivision of the state government, excluding the counties. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §§103D-1007, 206M-31)

§3-124-42 Applicability. (a) These rules shall apply to solicitations issued pursuant to sections 103D-302 and 103D-303, HRS, for public works projects.

(b) These rules shall not apply:

(1) Whenever the application will disqualify any state agency from receiving federal funds or aid; or

(2) To the counties.

(c) The in-state contractor preference may not be used in combination with any other preference otherwise available under state or federal law. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

§3-124-43 Qualification procedure. (a) Any offeror desiring an in-state contractor preference pursuant to chapter 103D, HRS, shall complete an application for a tax clearance and submit it to the State department of taxation for a tax clearance certificate. Upon receipt of the application, the state department of taxation will verify that the applicant has filed all state tax returns, and has paid all amounts owing on such returns for the number of years and for the dollar amounts specified in section 103D-1007, HRS.

(b) The state department of taxation will issue a tax clearance certificate to the applicant upon its determination that the applicant has filed all state tax returns, and has paid all amounts owing on such returns, in accordance with section 103D-1007, HRS. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

§3-124-44 Bidding procedure. Solicitations for public works projects issued by a state purchasing

agency and consistent with section 3-124-41, shall:

- (1) State that a price preference will be given to in-state contractors subject to the directions in the solicitation on applicability, qualification procedures, and limitations of the in-state contractor preference;
- (2) Provide an appropriate space for the offeror to indicate whether the in-state preference is selected by the offeror;
- (3) State that if the in-state contractor preference is selected, the price preference percentage, as provided in section 103D-1007, HRS, shall be used for price evaluation, as specified in section 3-124-45;
- (4) State that the in-state preference may not be used in combination with any other preference available under state or federal law and that the selection of the in-state contractor preference takes precedence over the selection of any other preference and all other selections will be ignored by the procuring agency; and
- (5) Require the offeror requesting an in-state contractor preference to submit with the offer an tax clearance certificate obtained in accordance with section 3-124-43 and shall caution the offeror that failure to submit the tax clearance certificate automatically voids the selection of the in-state contractor preference. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

§3-124-45 Evaluation procedure and contract award. (a) When the in-state contractor preference is not selected by an offeror, the offer shall be evaluated by applying all preferences selected by the offeror which are allowed by statute. Calculations for adjustments shall be based upon the original price offered. Should more than one preference apply, the evaluated price shall be the sum of the original price plus applicable preference adjustments.

(b) Whenever an offeror selects and qualifies for the in-state contractor preference, the prices offered by those not selecting or qualifying for the in-state contractor preference shall be increased by the

percentage allowed in section 103D-1007, HRS, for evaluation purposes.

(c) The responsible and responsive offeror submitting the offer with the lowest evaluated price shall be awarded the contract.

(d) For offers submitted pursuant to 103D-302 and after taking into consideration all applicable preferences, the contract amount shall be the original price offered.

(e) Should the price comparison result in identical evaluated prices, and the tied bidders meet the provisions of section 3-124-43, the procurement officer shall select the winning bid resulting from an invitation for bids, pursuant to section 3-122-34.

(f) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

§§3-124-46 to 3-124-49 (Reserved).

SUBCHAPTER 7

TAX PREFERENCE

§3-124-50 Purpose. (a) The purpose of these rules is to provide procedures for the application of the tax preference for taxpaying bidders. The objective is to ensure fair competition for bidders paying the applicable Hawaii general excise tax and the applicable Hawaii use tax.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1008)

§3-124-51 Definitions. As used in this chapter: "Tax exempt bidder" means a bidder that is not subject to the applicable Hawaii general excise and applicable Hawaii use tax, under chapters 237 and 238,

HRS, resulting from the performance of the work required by the solicitation; or a bidder that has tax exempt status under federal or state laws or both.

"Taxpaying bidder" means a bidder that is subject to the applicable Hawaii general excise tax and applicable Hawaii use tax, under chapters 237 and 238, HRS, for the performance of the work required by the solicitation. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1008)

§3-124-52 Applicability. These rules shall apply to all solicitations issued pursuant to section 103D-302, HRS, by a purchasing agency and the solicitation shall so state therein, except whenever the application will disqualify any government agency from receiving federal funds or aid. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1008)

§3-124-53 Qualification procedure. Any taxpaying bidder shall qualify for the tax preference pursuant to this subchapter by submitting tax clearance certificate(s) issued by the state department of taxation and the Internal Revenue Service to the purchasing agency. [Eff and comp 11/17/97; comp 11/15/01; comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1008)

§3-124-54 Bidding procedure. Solicitations issued by a purchasing agency shall contain a notice stating that a tax preference will be given to taxpaying bidders. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1008)

§3-124-55 Evaluation procedure and contract award. (a) As applicable, the price submitted by the tax exempt bidder shall be increased by the applicable retail rate of the Hawaii general excise tax and applicable use tax to determine the evaluated price for award purposes.

(b) The contract amount shall be the original price bid, exclusive of any preferences used in evaluating the bid.

(c) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified herein. The preferences (1) through (7) in this section shall be applied to the original price. The sum of the preferences, where applicable, shall be added to the original price, except preference (1) shall be subtracted from the Hawaii products price.

- (1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt bidders, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to section 103D-1004, HRS; and
- (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS; and
- (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(d) Should the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices, the procurement officer shall award the contract pursuant to section 3-122-34. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: HRS §103D-1008)

§§3-124-56 to 3-124-59 (Reserved).

SUBCHAPTER 8

QUALIFIED COMMUNITY REHABILITATION PROGRAMS

§3-124-60 Purpose. (a) The purpose of these rules is to establish procedures for extending a preference for goods and services provided by qualified community rehabilitation programs.

(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402). [Eff and comp 11/17/97;

comp 11/25/02] (Auth: HRS §§103D-202, 103D-1009) (Imp: HRS §§103D-1009, 103D-1010, 103D-1011)

§3-124-61 Definitions. Definitions are in section 103D-1001, HRS. The following definitions are also applicable to terms used in this chapter:

"Department" means the state department of labor and industrial relations.

"Nonprofit corporation" means a corporation of which no part of the income or profit is distributable to its members, directors, or officers pursuant to chapter 415B, HRS.

"Partners in employment program list" means a list issued by the state procurement office that identifies goods or services offered by qualified rehabilitation programs to all State and county agencies.

"Qualified offeror" means any offeror operating a qualified community rehabilitation program who is also a nonprofit corporation and is in conformance with criteria established by the department pursuant to chapter 91, HRS. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1009, 415B-2) (Imp: HRS §103D-1009)

§3-124-62 Applicability. These rules shall apply to all solicitations for goods and services made pursuant to sections 103D-302 and 103D-303 issued by a purchasing agency and the solicitation shall so state therein. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §103D-202) (Imp: SLH 1997, Act 352, §2, §103D-1009)

§3-124-63 Qualification procedure. (a) Qualification for obtaining a preference shall be in conformance with criteria established by this subchapter.

(b) Organizations listed in the partners in employment program qualify for a preference. All other prospective offerors desiring a preference shall submit with their offer the "Certificate of Eligibility to be Certified as a Qualified Community Rehabilitation Program" issued by the administrator. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1009) (Imp: HRS §103D-1009)

§3-124-64 Evaluation procedure and contract award. (a) In evaluating offers for goods or services, all chief procurement officers and heads of purchasing agencies shall purchase from qualified community rehabilitation programs provided the prices submitted by a noncommunity rehabilitation program shall be increased by the percentage allowed under section 103D-1009, HRS, to determine the lowest evaluated offeror.

(b) The contract amount shall be the amount of the price offered, exclusive of any preference.

(c) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except preference (1) shall be subtracted from the Hawaii products prices.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;
- (7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(d) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made pursuant to section 3-122-34.

(e) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1009) (Imp: HRS §103D-1009)

§3-124-65 Waiver to competitive bids or proposals. (a) Notwithstanding the provisions of section 3-124-66, any purchasing agency without advertising or calling for offers may purchase goods and services provided by qualified community rehabilitation programs pursuant to section 3-124-63 which have indicated an interest in supplying the goods or services and on an equitable basis may apportion the business among the interested programs; provided that:

- (1) The goods or services meet the specifications and needs of the head of the purchasing agency and are purchased at a fair market price as determined by the appropriate public agency; and
- (2) The provider complies with section 103D-1010, HRS, and submit with their offer the "Certificate of Eligibility to be Certified as a Qualified Community Rehabilitation Program."

(b) Purchasing agencies shall negotiate the conditions and terms for the purchase, including the price of the good or service with the qualified community rehabilitation program; provided that the price of the good or service shall not exceed the fair market price and there is assurance that the qualified community rehabilitation program proposal is in compliance with all rules related to procurement. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02] (Auth: HRS §§103D-202, 103D-1010) (Imp: HRS §§103D-1010, 103D-1011)

§3-124-66 Partners in employment program. The state procurement office shall:

- (1) Maintain a current list of partners in employment program providers with descriptions for goods or services that have been determined by the department to meet that department's criteria and annually distribute the list to all state and county purchasing agencies; and
- (2) Ensure that any good or service available from a qualified community rehabilitation program pursuant to this subchapter is not placed on the Hawaii products list under section 103D-1002, HRS. [Eff and comp 11/17/97; am and comp 11/15/01; am and

comp 11/25/02] (Auth: HRS §§103D-202,
103D-1010) (Imp: HRS §§103D-1010, 103D-1011)

§3-124-67 Exempt from wage provision. Service
contracts awarded to qualified community rehabilitation
programs under this subchapter shall be exempt from
wages provision of section 103-55, HRS. [Eff and comp
11/17/97; comp 11/15/01; comp 11/25/02] (Auth:
HRS §§103-55, 103D-202) (Imp: HRS §103-55)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to and compilation of chapter 3-124, Hawaii Administrative Rules, on the Summary page dated October 31, 2002, were adopted on October 31, 2002 following a public hearing held on October 16, 2002 in Honolulu, Hawaii; and via video conference from Honolulu, Hawaii on October 16, 2002 to Hilo, Hawaii; Wailuku, Maui; and Lihue, Kauai; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News and The Garden Island on September 16, 2002.

They replace interim rules dated 11/15/01 and shall take effect ten days after filing with the Office of the Lieutenant Governor.

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

MARY ALICE EVANS
State Comptroller

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date:_____

Filed

APPROVED AS TO FORM:

Deputy Attorney General